



October 18, 2002

Mr. Michael D. Chisum
General Counsel
Texas Savings and Loan Department
2601 North Lamar, Suite 201
Austin, Texas 78705

OR2002-5913

Dear Mr. Chisum:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170881.

The Texas Savings and Loan Department (the "department") received a request for any and all documents contained in the file of a particular mortgage broker licensee (the "licensee"). You claim that the requested information is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that certain information has been redacted from the submitted documents. You do not assert, nor has our review of our records indicated, that you have been granted a previous determination to withhold any such information without seeking a ruling from this office. Because we can discern the specific categories of information that have been redacted, being deprived of this information does not inhibit our ability to make a ruling *in this instance*. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. See Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested").

You assert that the licensee's social security number is confidential pursuant to section 56.001 of the Occupations Code. Section 552.101 of the Government Code excepts

from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses confidentiality provisions such as section 56.001, which provides:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 56.001. You indicate the documents reflect that the subject of this request provided his social security number to the department as part of his application renewal for a mortgage broker license. Accordingly, we find that the social security number is excepted from disclosure under section 56.001 of the Occupations Code and must therefore be withheld pursuant to section 552.101 of the Government Code.

You also contend that certain financial information and the licensee's home address are protected under common law privacy principles.¹ Common law privacy, which is also encompassed by section 552.101 of the Government Code, protects information if it (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person and (2) is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). Common law privacy protects only the rights of individuals, not corporations. *See* Open Records Decision No. 620 (1993) (corporation has no common law privacy interest in its financial information); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). In addition, this office has ruled that names, addresses, and telephone numbers are not generally "intimate" information. *See generally* Open Records Decisions Nos. 478 (1987), 455 (1987).

The submitted documents indicate that the financial information at issue concerns a corporation rather than an individual. Because corporations have no common law privacy interest in their financial information, the loan production information in Exhibit 2 and balance sheet in Exhibit 3 are not protected by privacy. Furthermore, the department has provided us with no basis for concluding that the licensee's address is protected by common law privacy in this instance. In short, none of the submitted information may be withheld pursuant to section 552.101 on the basis of common law privacy.

You also assert that the financial information may be excepted pursuant to section 552.110. Section 552.110(b) protects the property interests of private persons by excepting from disclosure commercial or financial information for which it is demonstrated based on specific

¹You also contend that the licensee's Texas driver's license number is excepted under common law privacy. However, as the legislature enacted section 552.130 specifically to address such information, we will consider it in the context of that exception.

factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. This exception requires a specific factual or evidentiary showing, not conclusory or generalized allegations, that substantial competitive injury would result from disclosure. Gov't Code § 552.110(b); *see* Open Records Decision No. 661 (1999).

Although the department asserts that this information constitutes commercial or financial information whose release would cause the licensee substantial competitive harm, it has failed to provide specific factual evidence that release of this information would harm the licensee's competitive interests. We also note that an interested third party is allowed 10 business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received arguments from the licensee for withholding the submitted information. The licensee has therefore not provided us with a basis for concluding that the submitted records contain proprietary information. *See, e.g.*, Gov't Code § 552.110(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Consequently, we find that none of the submitted information is excepted from disclosure under section 552.110.

We now address the Texas driver's license number contained in the requested information. Section 552.130 of the Government Code excepts from disclosure information relating to "a motor vehicle operator's or driver's license or permit issued by an agency of this state." Gov't Code § 552.130(a)(1). Therefore, in accordance with this section, the department must withhold the Texas driver's license number at issue.

Finally, we note that the submitted application includes an e-mail address. Section 552.137 of the Government Code provides that "[a]n e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Public Information Act]." Unless the owner of this e-mail address has affirmatively consented to its release, the department must withhold it in accordance with section 552.137. *See* Gov't Code § 552.137(b).

In summary, the licensee's social security number must be withheld under section 552.101. The department must also withhold the marked e-mail address pursuant to section 552.137 unless the owner thereof has consented to its release. The licensee's Texas driver's license number must be withheld under section 552.130. The department must release the remaining information.

Although you request that we issue a previous determination with respect to this type of information, we decline to do so at this time. Accordingly, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

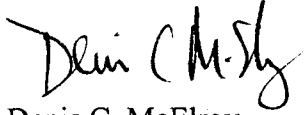
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Denis C. McElroy". The signature is fluid and cursive, with the first name "Denis" and last name "McElroy" clearly distinguishable.

Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/seg

Ref: ID# 170881

Enc. Submitted documents

c: Mr. Marchris G. Robinson
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(w/o enclosures)